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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/417,863	10/13/1999	JEFFRY JOVAN PHILYAW	PHLY-24.767	8055

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EXAMINER

BLAIR, DOUGLAS B

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/417,863

Applicant(s)

PHILYAW ET AL.

Examiner

Douglas B Blair

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/4/2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Claims 1-30 are currently pending in this application.

***Claim Rejections - 35 USC § 103***

2. Claims 1-5, 10-11, 15-20, 25-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,666,293 to Metz et al. in view of U.S. Patent Number 5,935,004 to Tarr et al..
3. Metz teaches the invention substantially as claimed (As in claim 16) including a system for distributing software, comprising: a television broadcast distribution system (Figure 1 shows a television broadcast distribution system.) having one or more broadcast channels for broadcasting analog and digital television information to a receiver of a user (col. 19, lines 38-50); one or more discrete software data streams designated for transmission on select ones of said one or more broadcast channels (col. 8, lines 32-39); and a user storage device connected to said receiver for storing said selected one or more discrete software data streams which were downloaded (col. 9, lines 38-55); wherein said one or more software data streams are transmitted over said selected ones of said one or more broadcast channels (col. 8, lines 32-39), each of said one or more discrete software data streams having a unique ID associated therewith (col. 9, lines 56-67 and col. 10, lines 1-12); wherein said select ones of said one or more discrete software data streams are downloaded via said receiver according to said respective unique ID's (col. 9, lines 56-67 and col. 10, lines 1-12); however, Metz does not explicitly teach a system wherein

Art Unit: 2142

software data streams are transmitted at a scheduled time or an interface for monitoring software streams for downloading.

Tarr teaches a system wherein software data streams are transmitted over a broadcast channel at a scheduled time (col. 4, lines 48-62) and an interface at the receiver for monitoring a schedule of data streams for software to download (col. 7, lines 27-47).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Metz regarding software download to a set-top box with the teachings of Tarr regarding using an interface for monitoring scheduled software streams for downloading because such software enhances usability of the system and reduces software and hardware overhead necessary for downloading (Tarr, col. 2, lines 41-64).

4. As to claim 17, Tarr teaches a system wherein a cable television broadcast system is used (col. 3, lines 49-67 and col. 4, lines 1-6).

5. As to claim 18, Metz teaches a system wherein the one or more software data streams are checked for errors when being downloaded (col. 37, lines 44-59).

6. As to claim 19, Metz teaches a system wherein the receiver automatically re-selects for download, and downloads, one or more software data streams which fail the error checking process (col. 37, lines 44-59).

7. As to claim 20, Metz teaches a system wherein one or more software data streams are broadcast repetitively during a specific period of time (col. 8, lines 52-64).

8. As to claim 25, Metz teaches a system wherein a receiver is programmed by inputting parameters which comprise time (col. 9, lines 20-30), channel, and unique ID information (col. 9, lines 47-67 and col. 10, lines 1-12).

Art Unit: 2142

9. As to claim 26, Metz teaches a system wherein one or more software data streams comprise software applications which are broadcast on a first channel, and one or more software updates which are broadcast on a second channel (col. 41, lines 51-67 and col. 42, lines 1-5).
10. As to claim 30, Metz teaches a system wherein said television broadcast distribution system is a digital television broadcast system (col. 4, lines 57-67 and col. 5, lines 1-4).
11. As to claims 1-5, 10-11, and 15, they feature the same limitations as claims 16-20, 25-26 and 30 and are thus rejected on the same basis as claims 16-20, 25-26 and 30.
12. Claims 6, 12-14, 21 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,666,293 to Metz et al. in view of U.S. Patent Number 5,935,004 to Tarr et al. in further of view of U.S. Patent Number 5,894,516 to Brandenburg.
13. As to claim 21, the teachings of the Metz-Tarr combination combine to make the teachings of claim 16 obvious; however, they do not explicitly teach a system in which the data streams are broadcast only one during a specific time period.

Brandenburg teaches a system where one or more software data streams are broadcast once during a specific time period (col. 3, lines 59-65).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Metz-Tarr combination regarding a system for downloading software with the teachings of Brandenburg regarding broadcasting a data stream once because broadcasting a data stream only once reduces the bandwidth necessary for software transmission (Brandenburg, col. 1, lines 36-51).

Art Unit: 2142

14. As to claim 27, the teachings of the Metz-Tarr combination combine to make claim 16 obvious; however they do not explicitly teach a user computer attached to the receiver receiving software.

Brandenburg teaches a system wherein select ones of said one or more software data streams are downloaded directly to a user computer over a communication link existing between said receiver and said user computer (col. 4, lines 54-61).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Metz-Tarr regarding a system for downloading software with the teachings of Brandenburg for distributing software from a receiver to a user computer because downloading software to a receiver device before installing it on a user computer enhances security (col. 4, lines 27-61).

15. As to claim 28, the Metz-Tarr-Brandenburg combination combines to teach the system as described by claim 27; however the Metz-Tarr-Brandenburg combination does not explicitly teach a system featuring a universal serial bus.

Official notice is taken that it is well known in the art of computer networking that two computers can be linked using a universal serial bus.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Metz-Tarr-Brandenburg combination regarding to computers linked together with the idea of using a universal serial bus to link the computers because a universal serial bus is an easy and efficient way to link to computers together.

Art Unit: 2142

16. As to claim 29, the Metz-Tarr-Brandenburg combination combines to teach the system as described by claim 27; however the Metz-Tarr-Brandenburg combination does not explicitly teach a system featuring a high-performance serial bus.

Official notice is taken that it is well known in the art of computer networking that two computers can be linked using a high-performance serial bus.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Metz-Tarr-Brandenburg combination regarding to computers linked together with the idea of using a high-performance serial bus to link the computers because a high-performance serial bus is an easy and efficient way to link to computers together.

17. As to claims 6 and 12-14, they feature the same limitations as claims 21 and 27-29 and are thus rejected on the same basis as claims 21 and 27-29.

18. Claims 7-8 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,666,293 to Metz et al. in view of U.S. Patent Number 5,935,004 to Tarr et al. in further view of U.S. Patent Number 5,003,384 to Durden.

19. As to claim 22, the teachings of the Metz-Tarr combination combine to make claim 16 obvious. Metz teaches the use of unique ID's to represent one or more software data streams (col. 9, lines 56-67 and col. 10, lines 1-12); however, the Metz-Tarr combination does not explicitly teach an accounting device.

Durden teaches a system wherein an accounting device logs unique ID's of one or more programs which were downloaded, and transmits said unique ID's to a provider of one or more data streams using said accounting device (col. 8, lines 24-68 and col. 9, lines 1-30).

Art Unit: 2142

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Metz-Tarr combination regarding the distribution of software with the teachings of Durden regarding the storage and uploading of accounting data because an accounting device is useful for billing for broadcast services (Durden, col. 2, lines 11-39).

20. As to claim 23, Durden teaches a system wherein an accounting device interfaces to a public-switched telephone network, and transmits said unique ID's over said public-switched telephone network to a provider of one or more data streams (col. 8, lines 24-68 and col. 9, lines 1-30).

21. As to claims 7-8, they feature the same limitations as claims 22-23 and are thus rejected on the same basis as claims 22-23.

22. Claims 9 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,666,293 to Metz et al. in view of U.S. Patent Number 5,935,004 to Tarr et al. and U.S. Patent Number 5,003,384 to Durden in further view of U.S. Patent Number 6,317,885 to Fries.

23. As to claim 24, the Metz-Tarr-Durden combination combine to make claim 22 obvious; however they do not explicitly teach the use of a packet-switched global communication network to transmit accounting data.

Fries teaches a television set-top box that is directly connected to the internet (col. 4, lines 29-43).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Metz-Tarr-Durden combination regarding



Art Unit: 2142

the distribution of software and the uploading of accounting data with the teachings of Fries regarding a television set-top box connected to the internet because transmitting data over a packet-switched global network would be a more modern alternative to Durden method of sending accounting data over the telephone network.

24. As to claim 9, it features the same limitations as claim 24 and is thus rejected on the same basis as claim 24.

### ***Response to Arguments***

25. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

27. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2142

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on 703-305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3800.

Douglas Blair  
February 19, 2003

DBB

MEHMET B. GECKIL  
PRIMARY EXAMINER

Mehmet Geckil

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